

States' Rights and Federal Power

UNIT QUESTION: How Should Power Be Distributed Among Local, State, and Federal Governments?

Current Issue Question: Should states be allowed to set their own laws on who can vote?

Unit Introduction: In this unit, students will consider the division of powers between various levels of government. They will see that this question, which at first may seem dry, has animated some of the most fundamental conflicts in our nation's history, over the genesis of our government, the removal of Native Americans, the Civil War, and desegregation. They will learn about the tug-of-war between federal and state power in the Articles of Confederation and the Constitution, as well as Supreme Court precedents that guide us today. George Washington will justify his suppression of the Whiskey Rebellion, and Daniel Webster will argue against nullification of federal laws. Students will see how South Carolina used a state's rights argument to justify the racism that underpinned slavery. Dwight D. Eisenhower and Orval Faubus will show them what happens when military power is used to enforce federal law, and Sandra Day O'Connor will point out that state and federal authority is intended as a safeguard for individual rights.

Students will begin the unit by considering the current controversy over state voter ID laws. By now, students have plenty of practice having difficult conversations around race, but it is always helpful to reiterate Discussion Guidelines (see p. 18 and Appendix J). Teachers may also wish to make connections with voter ID laws in their own states, or with other current states' rights controversies.

LESSON 3.1

ON WHAT BASIS DID THE NAACP ARGUE THAT NORTH CAROLINA LAW VIOLATED THE VOTING RIGHTS ACT?

Historical Figure: William J. Barber II

Event: The NAACP sues North Carolina's governor, 2015

Introduction: Sort the following questions into those that should be decided by states and those that should be decided by the federal government:

- Who should be allowed to vote?
- Who should be allowed to drive a car?
- Who should be required to go to school?
- Who should be allowed to own a gun?

Why did you classify the questions the way you did?

Mini-Lecture:

- The Constitution originally gave states the power to determine who could vote.
- Until the end of the Civil War, most states restricted voting privileges to White men.
- In 1870, the 15th Amendment was passed; it promised all citizens the right to vote regardless of race.
- In some southern states, Black people were prevented from voting through poll taxes (pay to vote) or literacy tests (e.g., recite the preamble of the Constitution) that were not applied to Whites.
- In 1965, the Voting Rights Act gave Congress special powers to ensure that southern states did not deny people the right to vote based on race.
- In 2013, the Supreme Court decided that it was no longer necessary for southern states to seek federal approval before changing voting regulations.
- In 2013, the North Carolina state legislature passed HB589, which introduced new restrictions that the legislature said were to reduce voter fraud (people casting votes illegally). Other people argued that this law was designed to make voting more difficult for African Americans, young people, and poor people.
- A group led by the North Carolina NAACP filed a lawsuit claiming that the bill violated national laws, including the Voting Rights Act, as well as the U.S. Constitution; our document comes from this case, which the NAACP won in 2016.
- Reverend William J. Barber II became president of the North Carolina NAACP in 2006.
- Patrick McCrory was the governor of North Carolina from 2013 to 2017.

Vocabulary:

illusory: not real, but seeming to be real

abridgement: limiting of

electoral: related to voting

electorate: voters

franchise: right to vote

onerous: difficult and complicated

discretion: power of judgment

precinct: part of a city or town

out-of-precinct voting: voting beyond limits of neighborhood where one lives

enjoin: to prohibit

provision: part of a law

disproportionate: affecting one group more than others

legislature: group that makes laws

credible legislative rationale: believable
reason for making a law

depress: to reduce

Document: *North Carolina State Conference of the NAACP v. Patrick Lloyd McCrory*, North Carolina NAACP, 2015

These cases seek to protect the voting rights of North Carolina citizens. . . . Because voting is the fundamental building block of political power, “[o]ther rights, even the most basic, are illusory if the right to vote is undermined.” . . .

Congress enacted Section 2 of the Voting Rights Act (VRA) to provide added protection to the fundamental right to vote. Section 2 announces a straightforward rule: regardless of the reasons why a state chooses to change a voting practice, the change is unlawful if it “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” . . . By the plain terms of the statute, such an abridgement occurs if a voting practice imposes electoral burdens that result in racial minorities having “less opportunity than other members of the electorate to participate in the political process.” . . .

During the waning hours of the 2013 legislative session, the General Assembly enacted House Bill 589 (“HB589”), which severely impairs access to the franchise of all North Carolinians—but especially African-American and young voters. Among other things, HB589 imposes onerous and strict voter ID requirements; eliminates same-day registration (SDR); eliminates out-of-precinct provisional voting; sharply reduces the availability of in-person early voting; eliminates the discretion previously given to localities to keep polls open for an extra hour on Election Day; expands poll observers and challengers; and eliminates the State’s civic engagement programs that allowed 16- and 17-year-olds to pre-register to vote. . . .

Indeed, at the time it enacted HB 589, the General Assembly had before it (or previously had been told) that African Americans used early voting, SDR, and out-of-precinct voting at far higher rates than whites. The evidence shows, moreover, that the elimination of these practices will interact with existing socioeconomic conditions to impose material burdens on African Americans’ ability to vote. North Carolina has an unfortunate and judicially recognized history of racial discrimination, and the effects of that discrimination persist to this day: poverty rates for African Americans are far higher than poverty rates for whites; and educational attainment is significantly lower for African Americans than it is for whites. Under the statute and governing case law, these facts are enough to establish a Section 2 violation, and the Court should enjoin the challenged provisions on that statutory basis alone.

. . . The law’s disproportionate burdens on African Americans, the highly unusual and expedited manner in which HB 589 was enacted, the evidence that was before the legislature at the time, and the absence of any credible legislative rationale all show that the legislature enacted the statute (at least in part) to

depress minority voter turnout, in violation of the Fourteenth and Fifteenth Amendments. Even if the legislature lacked discriminatory intent, HB 589 would nonetheless be unlawful because it imposes substantial burdens on the right to vote that are not outweighed by any substantial state purpose.

Source: North Carolina State Conference of the NAACP. (2015). Plaintiffs' brief in support of motion for preliminary injunction. Retrieved from documentcloud.org/documents/1303109-nc-voter-rights-plaintiffs-brief.html

Comprehension Questions:

1. Which type of changes to voting practices does the Voting Rights Act outlaw?
2. Which voting practices does HB 589 outlaw that are disproportionately used by Black voters?
3. The NAACP argues that the law aimed to reduce turnout among Black voters. Infer why the state legislature would want to do that.

Activities:

1. For each of the voting practices you listed in Comprehension Question 2, provide at least one reason the practice would be used by people who are poorer and have less education.
2. Divide the class in half and debate this proposition: The North Carolina state legislature has the right to change North Carolina's voting laws, even if their actions result in lower turnout of Black and poor voters.

Reflection: Did this lesson cause you to change your view on whether states or the federal government should control who can vote? Why or why not?

Resources:

Zucchini, D. (2013, August 13). North Carolina faces ACLU, NAACP lawsuits over new voter ID law. *LA Times*. Retrieved from latimes.com/nation/nationnow/la-na-nc-north-carolina-voter-id-lawsuits-20130813-story.html

LESSON 3.2

WHAT WAS THE BALANCE OF POWER BETWEEN THE STATES AND CONGRESS IN THE ARTICLES OF CONFEDERATION?

Historical Figure: Patrick Henry

Event: Articles of Confederation, 1777

Introduction: Rank the powers a government should have in order of importance: (a) declare war, (b) collect taxes, (c) make laws, (d) control education, (e) run courts. Explain your choices.

Mini-Lecture:

- The Articles of Confederation, from which our document is taken, was an agreement the 13 colonies made during the Revolutionary War, in which the United States gained independence from Britain.
- “Articles” are a legal document.
- “Confederation” is when a group of states or nations join together.
- Patrick Henry advocated independence from Britain and later served as governor of Virginia.
- Henry supported the Articles of Confederation because it allowed states to work together to defeat the British without giving up too many rights to a federal government.
- The Articles of Confederation was eventually replaced by the Constitution we have today.

Vocabulary:

these Presents: this document

delegate: representative

affixed: next to

perpetual: existing forever

stile: title

confederacy: group of states or nations working together

retain: to keep

sovereignty: control over itself

expressly: specifically

delegated: given

assembled: joined together

hereby: by signing below

severally: each

league: group

binding themselves: promising

offered to: threatened against

on account: because of

pretense: reason

whatever: at all

charges: costs

incurred: spent

defray: to pay for

treasury: pool of money

the several states: each state

lay: to set

levy: to collect

Document: Articles of Confederation, Articles I, II, III, VII, and IX, 1777.

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Articles of Confederation and perpetual Union between the states of New Hampshire, Massachusetts-bay Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

I. The Stile of this Confederacy shall be “The United States of America.”

II. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

III. The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and

their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever. . . .

VIII. All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State. . . .

The taxes for paying that proportion shall be laid and levied by the authority and direction of the [state] legislatures of the several States within the time agreed upon by the United States in Congress assembled. . . .

IX. The united states in congress assembled, shall have the sole and exclusive right and power of determining on peace and war, . . . of sending and receiving ambassadors—entering into treaties and alliances.

Source: Avalon Project. (2008). Articles of Confederation. Retrieved from avalon.law.yale.edu/18th_century/artconf.asp

Comprehension Questions:

1. Of the powers listed in the introduction, which did Congress have?
2. How would Congress pay for the costs of war?

Activities:

1. What were the strengths and weaknesses of the Articles of Confederation? Work with a partner to make a T-chart.
2. Do you think the fact that the Revolutionary War was going on made the states more or less willing to help one another? Why?

Reflection: Patrick Henry supported the Articles of Confederation because he wanted states to have more power than the federal government. Give an example of something the federal government does today that Henry would think took too much power from states.

Resources:

Colonial Williamsburg Foundation. (2016). Patrick Henry. Retrieved from history.org/Almanack/people/bios/biohen.cfm?PHPSESSID=19af3aca2b6086426b88fe0608f0a9f0

LESSON 3.3

HOW DID THE CONSTITUTION COMPARE WITH THE ARTICLES OF CONFEDERATION?

Historical Figure: James Madison

Event: Constitution created, 1787

Introduction: What is one power you think states, instead of the federal government, should have, and why?

Mini-Lecture:

- James Madison is known as the “architect of the Constitution” because of his lead role in writing it; he also served as president from 1809 to 1817.
- Madison wanted to balance the power of the federal government and states so that neither had too much control.
- A group of 55 men gathered in Philadelphia in 1787 at the Constitutional Convention in order to write the Constitution.
- The Constitution was ratified by all 13 states by 1790.
- Our document comes from Article I of the Constitution, and from the 10th Amendment, which was added in 1791.

Vocabulary:

duties, imposts, and excises: kinds of taxes

uniform: the same

regulate: to control

naturalization: process of becoming a citizen

coin: to create money

thereof: that is part of

coin: money

exclusive right: patent

tribunal: court

inferior to: less powerful than

Letters of Marque and Reprisal: documents allowing the government to take property of enemies

appropriation: when Congress takes money from the Treasury for a specific purpose

militia: army

execute: to enforce

suppress: to put down

insurrection: rebellion

repel: to defend against

carry into execution: to do

foregoing: listed above

vested by: given in

several: other

delegate: to give

prohibited: taken away

reserved to: kept for

respectively: individually

Document: Constitution, Article 1, Article 4 (1787), 10th Amendment (1791)

Article I, Section 8 1. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; 2. To borrow Money on the credit of the United States; 3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; 4. To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States; 5. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures; 6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States; 7. To establish Post Offices and post Roads; 8. To promote the Progress of Science and useful Arts, by securing for limited Times to Authors

and Inventors the exclusive Right to their respective Writings and Discoveries; 9. To constitute Tribunals inferior to the supreme Court; 10. To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations; 11. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water; 12. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; 13. To provide and maintain a Navy; 14. To make Rules for the Government and Regulation of the land and naval Forces; 15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; . . . 17. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Amendment X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Source: Avalon Project. (2008). U.S. Constitution. Retrieved from avalon.law.yale.edu/18th_century/usconst.asp

Comprehension Questions:

1. Look back at the list of powers in the introduction of Lesson 3.2. Which of them does the Constitution give to Congress?
2. One clause of Article I, Section 8 is called the "Elastic Clause" because it can be used to stretch the powers of Congress. Infer which clause it is.
3. Because of the 10th Amendment, who gets powers, such as establishing a school system, that are not mentioned in the Constitution?

Activities:

1. Choose one of the powers listed in Article 1, Section 8. Work with a small group to create a cartoon or illustration showing what could go wrong if the states had that power instead of the federal government.
2. How do you think James Madison would have tried to convince people like Patrick Henry, who preferred more rights for states, to accept the Constitution? Write a letter from Madison to Henry.

Reflection: Which document do you think gives more appropriate powers to the states and the federal government, the Articles of Confederation or the Constitution? Why?

Resources:

Johnson, P. N. (Director), & Gasdik, N. J. (Producer). (1989). *A more perfect union: America becomes a nation*. USA: Brigham Young University.

LESSON 3.4

HOW DID GEORGE WASHINGTON EXPLAIN HIS DECISION TO SUPPRESS THE WHISKEY REBELLION?

Historical Figure: George Washington

Event: Whiskey Rebellion, 1791

Introduction: Which taxes do people today dislike most? Why?

Mini-Lecture:

- George Washington was president from 1789 to 1797.
- In order to pay debts from the Revolutionary War, the government needed to raise money, and it did so by collecting taxes.
- One of the taxes Congress passed while Washington was president was an “excise tax” on whiskey, which means that people had to pay a tax whenever they bought whiskey.
- This tax was unpopular especially in rural areas such as Western Pennsylvania, where people brewed their own whiskey and used it in place of money before U.S. dollars were widely used.
- A law was also passed rewarding people for turning in neighbors who might be buying or selling whiskey without paying the tax.
- Some people in Western Pennsylvania protested the tax and refused to pay it.
- George Washington eventually used the army to fight back against the rebels and force people to pay the tax.
- Our first document was written by a group of people who met in Pittsburgh in 1791 to discuss the tax on whiskey.
- Our second document is George Washington’s response to the protests in 1792.

Vocabulary:

minutes: notes on what happened at a meeting

resolved: agreed

deservedly: for good reasons

obnoxious: upsetting

attend: to accompany

infringement: restriction

partial: unfair

liable to: likely to bring about

abuse: cheating

domestic manufacture: the action of people producing things in their own homes

vessel: bottle or container

ransack: to search

informer: tattletale

delinquency: bad behavior

precedent: example for the future

excise: tax on the sale of a good

sport with: to play with

gratify: to please

interested: biased

measure: action

whereas: because

unwarrantable: not allowable

proceedings: activities

obstruct: interfere with

revenue: tax

spirits: alcohol

pursuant to: in order to carry out

express: specific

contrary to: against
presents: documents
admonish: to scold
exhort: to urge
desist from: to stop
combinations and proceedings: actions

whatsoever having for object: with the
 purpose of
inasmuch as: because
put in execution: used
infractor: criminal
thereto: to that law

Documents:

1. Minutes of the meeting at Pittsburgh, unknown author, 1791

Resolved, That the said law [taxing whiskey] is deservedly obnoxious to the feelings and interests of the people in general, as being attended with infringements on liberty, partial in its operations, attended with great expense in the collection, and liable to much abuse. It operates on a domestic manufacture, a manufacture not equal through the States. It is insulting to the feelings of the people to have their vessels marked [so they could be taxed], houses painted and ransacked, to be subject to informers, gaining by the occasional delinquency of others. It is a bad precedent tending to introduce the excise laws of Great Britain and of countries where the liberty, property and even the morals of the people are sported with, to gratify particular men in their ambitious and interested measures.

Source: Pennsylvania Archives. (n.d.). Papers relating to what is known as the Whiskey Insurrection in Western Pennsylvania, 1794. Retrieved from fold3.com/document/3093996/

2. A Proclamation, George Washington, 1792

Whereas certain violent and unwarrantable proceedings have lately taken place tending to obstruct the operation of the laws of the United States for raising a revenue upon spirits distilled within the same [United States], enacted pursuant to express authority delegated in the constitution of the United States; which proceedings are subversive of good order, contrary to the duty that every citizen owes to his country and to the laws, and of a nature dangerous to the very being of government:

Now therefore I George Washington, President of the United States, do by these presents most earnestly admonish and exhort all persons whom it may concern, to refrain and desist from all unlawful combinations and proceedings whatsoever having for object or tending to obstruct the operation of the laws aforesaid; inasmuch as all lawful ways and means will be strictly put in execution for bringing to justice the infractors thereof and securing obedience thereto.

Source: The Avalon Project. (2008). George Washington—Proclamation of September 15, 1792. Retrieved from avalon.law.yale.edu/18th_century/gwproc08.asp

Comprehension Questions:

1. What was the main purpose of the authors of Document 1?
2. Choose a quotation in which the authors of Document 1 compare the tax to taxes from colonial times.
3. What reason does Washington give for why he should be able to collect taxes on whiskey?

Activities:

1. Divide the class in half and have Washington debate the people who met in Pittsburgh about whether the tax on whiskey was constitutional or not. Be sure to cite specific sections of the Constitution from Lesson 3.3.

Reflection: Do you think Washington was right to use the army to suppress the rebellion? Why or why not?

Resources:

The Gilder Lehman Institute for American History. (2016). The Whiskey Rebellion, 1794. Retrieved from gilderlehrman.org/history-by-era/early-republic/resources/whiskey-rebellion-1794

LESSON 3.5

HOW DID STATES' RIGHTS AND FEDERALIST INTERPRETATIONS OF THE CONSTITUTION DIFFER?

Historical Figure: John Marshall

Event: *McCulloch v. Maryland*, 1819

Introduction: Which of the following items are “necessary and proper” for human life? Choose only five from the list: (a) spiritual beliefs, (b) a loving family, (c) art and music, (d) a safe place to live, (e) friends who respect you, (f) good health, (g) food and water, (h) self-confidence, (i) freedom, (j) a fair government. Compare your list with a classmate’s.

Mini-Lecture:

- In 1816, Congress opened a national bank, with branches in several cities around the country.
- Opening the bank was controversial, because the Constitution did not state that Congress could (or could not) open a bank.
- In 1818, the state of Maryland asked the national bank to pay taxes, just like any other business would.
- James McCulloch, the head of the Baltimore, Maryland, branch of the national bank, refused to pay the tax and sued the state of Maryland.
- McCulloch’s lawyers argued that the federal government should not have to pay taxes to a state.

- Maryland's lawyers argued that the federal government did not have the right to open a national bank in the first place, but if the government did so, it should pay taxes.
- Our document comes from the Supreme Court's decision on the case, written by John Marshall, who was chief justice from 1801 to 1835.

Vocabulary:

<i>cause</i> : case	for carrying out the rest of the
<i>incorporate</i> : to open	"enumerated powers" (see Lesson
<i>enumerated powers</i> : powers of the federal	3.3)
government listed in Article I, Section	<i>abridge</i> : to make smaller
8 of the Constitution	<i>annihilate</i> : to destroy
<i>minutely</i> : in detail	<i>legislature</i> : U.S. Congress
<i>incidental or implied</i> : not directly stated	<i>means</i> : way of working
but hinted at	<i>intended</i> : meant by the writers of the
<i>foregoing</i> : previously listed	Constitution
<i>supremacy</i> : highest power	<i>purport</i> : to intend
<i>construe</i> : to interpret	<i>diminish</i> : to make smaller
<i>Elastic Clause</i> : Article I, Section 8, Clause	<i>unconstitutional</i> : not right according to
18 of the Constitution, which grants	the Constitution
Congress the ability to make laws	<i>void</i> : not to be followed
that are "necessary and proper"	

Document: *McCulloch v. Maryland*, Supreme Court, 1819

The first question made in the cause is—has Congress power to incorporate a bank? . . . Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the Articles of Confederation, excludes incidental or implied powers and which requires that everything granted shall be expressly and minutely described. . . .

To its enumeration of powers is added that of making "all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department thereof." . . .

. . . The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared. . . .

This ["necessary and proper"/Elastic] clause, as construed by the State of Maryland, would abridge, and almost annihilate, this useful and necessary right of the legislature to select its means. . . .

We think so for the following reasons: 1st. The ["necessary and proper"/Elastic] clause is placed among the powers of Congress, not among the

limitations on those powers. 2d. Its terms purport to enlarge, not to diminish, the powers vested in the Government. It purports to be an additional power, not a restriction on those already granted. . . .

We [Supreme Court justices] are unanimously of opinion that the law passed by the Legislature of Maryland, imposing a tax on the Bank of the United States is unconstitutional and void.

Source: Justia. (n.d.). *McCulloch v. Maryland* 17 U.S. 316. Retrieved from supreme.justia.com/cases/federal/us/17/316/case.html

Comprehension Questions:

1. What reason does the Supreme Court give for why Congress can open a bank?
2. Choose a quotation that shows why the Supreme Court decided to let the Elastic Clause stretch the powers of the federal government.
3. Infer who won the case.

Activities:

1. Look back at the list of 17 powers in Article 1, Section 8 of the Constitution, which are included in Lesson 3.3. With a small group, pick one, then create an illustrated list of three actions that would be “necessary and proper” for Congress to take in order to carry out that duty.

Reflection: Why do you think the writers of the Constitution used a phrase like “necessary and proper,” which people interpreted in such different ways?

Resources:

McBride, A. (2007). *McCulloch v. Maryland*. PBS. Retrieved from pbs.org/wnet/supremecourt/antebellum/landmark_mcculloch.html

LESSON 3.6

WHO IS RESPONSIBLE FOR PROTECTING NATIVE AMERICAN NATIONS: STATE OR FEDERAL GOVERNMENTS?

Historical Figure: John Ross

Event: *Cherokee Nation v. Georgia*, 1831

Introduction: Do you think of Native Americans as foreign to, or part of, the United States? Why?

Mini-Lecture:

- People of the Cherokee Nation had been living in what would become the southeastern United States for hundreds of years when the United States gained independence from Britain; the United States had signed treaties affirming the Cherokee’s rights to the land.

- In the early 1800s, the state government of Georgia decided they wanted the Cherokee people to leave so they could use their land (see Lesson 2.3); they passed state laws taking away the Cherokee people's rights.
- The Cherokee Nation, led by a chief named John Ross, sued the state of Georgia in federal court. They wanted the federal government to treat them as a foreign nation and prevent Georgia from interfering with their rights.
- Our document comes from *Cherokee Nation v. Georgia*, in which the Supreme Court ruled that Indians were neither members of foreign nations nor U.S. citizens, so they could not sue in federal courts; John Marshall, from Lesson 3.5, wrote the opinion.
- A year later, in the case *Worcester v. Georgia*, the Supreme Court reversed its decision and claimed that the Cherokee were a foreign nation, and therefore the Indian Removal Act, which led to the Trail of Tears (see Lesson 2.3), was unconstitutional.
- President Andrew Jackson ignored the ruling and forced the Cherokee to leave Georgia anyway.

Vocabulary:

pray: to ask for

injunction: an order from a court saying something should or should not be done

annihilate: to destroy

in force: valid

indulge: to act according to

calculated: suited

successive: one after another

residue: what is left over

subsistence: survival

jurisdiction: the right of a court to make a decision about a case

foreign state: independent nation

counsel: lawyer

conclusively: without doubt

alien: foreigner

aggregate: group

peculiar: unique

cardinal: important

distinction: characteristic

denominate: to be called

pupillage: being in a state of learning from another group

ward: someone who cannot make decisions for him- or herself

bestow: to concentrate

tribunal: court

assert: to claim

apprehend: to understand

motion: a request made in court

Document: *Cherokee Nation v. Georgia*, 1831

This bill is brought by the Cherokee Nation, praying an injunction to restrain the state of Georgia from the execution of certain laws of that state, which as is alleged, go directly to annihilate the Cherokees as a political society, and to seize, for the use of Georgia, the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force.

If courts were permitted to indulge their sympathies, a case better calculated to excite them can scarcely be imagined. A people once numerous, powerful,

and truly independent, found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts, and our arms, have yielded their lands by successive treaties, each of which contains a solemn guarantee of the residue, until they retain no more of their formerly extensive territory than is deemed necessary to their comfortable subsistence. To preserve this remnant the present application is made.

Has this Court jurisdiction of the cause? . . .

Do the Cherokees constitute a foreign state in the sense of the Constitution?

The counsel have shown conclusively that they are not a state of the Union, and have insisted that individually they are aliens, not owing allegiance to the United States. An aggregate of aliens composing a state must, they say, be a foreign state. Each individual being foreign, the whole must be foreign.

. . . But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else.

The Indian Territory is admitted to compose part of the United States. . . . They acknowledge themselves in their treaties to be under the protection of the United States. . . .

They may more correctly, perhaps, be denominated domestic dependent nations. . . . They are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.

They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their great father. . . .

These considerations go far to support the opinion that the framers of our Constitution had not the Indian tribes in view when they opened the courts of the Union to controversies between a state or the citizens thereof and foreign states.

The Court has bestowed its best attention on this question and, after mature deliberation, the majority is of opinion that an Indian tribe or nation within the United States is not a foreign state in the sense of the Constitution, and cannot maintain an action in the courts of the United States. . . .

If it be true that the Cherokee Nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future.

The motion for an injunction is denied.

Source: Cherokee Nation. (2017). *Cherokee Nation v. State of Georgia*. Retrieved from cherokee.org/About-The-Nation/History/Trail-of-Tears/Cherokee-Nation-v-State-of-Georgia

Comprehension Questions:

1. What was the Cherokee's argument for why they were a foreign nation?
2. Why didn't the Supreme Court accept their argument?

Activities:

1. With a partner, create a flow chart showing cause-and-effect relationships between the following statements, showing the Supreme Court's reasoning: (a) The Cherokee Nation is not a foreign nation; (b) the State of Georgia can take away the Cherokee's rights; (c) the Cherokee people look to the federal government for protection; (d) the Cherokee Nation cannot file a suit in a federal court; (e) the federal government signed treaties with the Cherokee Nation; (f) the Cherokee are a domestic dependent nation; (g) the Cherokee live inside the United States. If you find a statement that cannot fit into the flow chart because the cause-effect relationship breaks down, circle it.
2. As a "domestic dependent nation," what privileges and rights do the Cherokee have when compared to the state of Georgia?

Reflection: What impact do you think the Supreme Court's decision had on the way Native American people live today?

Resources:

Cherokee Nation. (2017). History. Retrieved from cherokee.org/About-The-Nation/History
 Cherokee Nation. (2017). Treaty of Holston, 1791. Retrieved from cherokee.org/About-The-Nation/History/Facts/Treaty-of-Holston-1791

LESSON 3.7

HOW DID DANIEL WEBSTER ARGUE THAT STATES COULDN'T NULLIFY FEDERAL LAWS?

Historical Figure: Daniel Webster

Event: Nullification crisis, 1832

Introduction: If students at your school had to choose a rule to "nullify," which one would it be? Why?

Mini-Lecture:

- In 1832, Congress passed a "tariff," or tax on imported products, such as cloth.
- This tax benefited factory owners in the North, but it caused economic hardship for people in the South, who bought more imported goods.
- As a result, southerners called this tax the "tariff of abominations," an "abomination" being something terrible.
- A South Carolina senator, Robert Hayne, made a speech to the Senate explaining that his state had "nullified" the tariff and they would not pay the tax.
- Massachusetts senator Daniel Webster gave a speech in response, from which our document is taken, in which he argued that South Carolina was wrong to nullify the tariff.
- President Andrew Jackson sent troops to South Carolina to make sure people paid the tariff.

Vocabulary:*maintain*: to claim*transcend*: to go beyond*arrest*: to stop*extent*: amount*lodge*: to keep*exclusively*: only*exigency*: urgency*annul*: to nullify, to decide not to follow
a law*palpably*: noticeably*observable*: obvious*contend*: to argue*severally*: on their own*assert*: to take*four-and-twenty*: 24*tariff*: tax on imported goods*usurpation*: something taken unfairly*duties*: taxes*expedient*: useful*provision*: rule*absurdity*: ridiculousness**Document:** Reply to Robert Hayne, Daniel Webster, 1832

I understand the honorable gentleman from South Carolina [Robert Hayne] to maintain that it is a right of the State Legislatures to interfere whenever, in their judgment, this government transcends its constitutional limits, and to arrest the operation of its laws.

. . . I understand him to maintain that the ultimate power of judging of the constitutional extent of its own authority is not lodged exclusively in the general government, or any branch of it; but that, on the contrary, the States may lawfully decide for themselves, and each State for itself, whether, in a given case, the act of the general government transcends its power.

I understand him to insist that, if the exigency of the case, in the opinion of any State government, require it, such State government may, by its own sovereign authority, annul an act of the general government which it deems plainly and palpably unconstitutional.

This leads us to inquire into the origin of this government and the source of its power. . . . It is observable enough that the doctrine for which the honorable gentleman [Hayne] contends leads him to the necessity of maintaining, not only that this general government is the creature of the States, but that it is the creature of each of the States severally, so that each may assert the power for itself of determining whether it acts within the limits of its authority. It is the servant of four-and-twenty masters, of different wills and different purposes, and yet bound to obey all.

. . . In [South] Carolina, the tariff is a palpable, deliberate usurpation; Carolina, therefore, may nullify it, and refuse to pay the duties. In Pennsylvania it is both clearly constitutional and highly expedient; and there the duties are to be paid. And yet we live under a government of uniform laws, and under a Constitution, too, which contains an express provision, as it happens, that all duties shall be equal in all the States. Does not this approach absurdity?

If there be no power to settle such questions, independent of either of the States, is not the whole Union a rope of sand? . . . Liberty and Union, now and forever, one and inseparable!

Source: Byrd, R. C. (1994). *The Senate, 1789–1989: Classic speeches, 1830–1993*. Washington, DC: U.S. Government Printing Office.

Comprehension Questions:

1. What was Webster's main purpose in writing this document?
2. Choose a quotation that shows why Webster thinks Hayne's argument is wrong, then put it into your own words.

Activities:

1. Webster compares a Union in which states can nullify federal laws to a "rope of sand." What other metaphors can you think of to express his meaning?
2. "Liberty and Union, now and forever, one and inseparable!" is a "zinger," or memorable slogan, that Webster used to end his speech. With a partner, make a list of zingers that Hayne could use to respond in defense of states' rights, then share them with the class.

Reflection: Whose argument do you find more convincing, Webster's argument for federal power, or Hayne's for states' rights? Why?

Resources:

United States Senate. (n.d.). Robert Y. Hayne reply to Daniel Webster. Retrieved from senate.gov/artandhistory/history/common/generic/Speeches_HaynesReply.htm

LESSON 3.8

HOW DID THE SOUTHERN STATES EXPLAIN THEIR DECISION TO SECEDE FROM THE UNION?

Historical Figure: Jefferson Davis

Event: Secession of South Carolina, 1860

Introduction: Should states have to follow federal laws they don't agree with? Why or why not?

Mini-Lecture:

- In 1860, Abraham Lincoln, who was known for opposing slavery, narrowly won the election for the presidency.
- Most Southern voters, many of whom were slave owners, opposed Lincoln.
- They were also upset that some Northern states that did not support slavery had not enforced Article IV, Section 2 of the Constitution (repeated in a law called the Fugitive Slave Act), which required that runaway slaves be returned to their owners (see Lesson 2.2).

- As a result, South Carolina's state legislature gathered on December 20, 1860, and wrote a declaration announcing their reasons for seceding, or separating, from the Union.
- By the time Lincoln took office in March 1861, seven Southern states had seceded and formed the Confederate States of America, led by Jefferson Davis.
- In April 1861, the Civil War officially began when Confederate forces fired on Fort Sumter in South Carolina, which was held by the Union (Northern states led by Lincoln).

Vocabulary:

compact: contract, agreement

parties: groups

material: important

arbiter: judge

remitted: to be entitled to

render: to make

fugitive: runaway

comply: to follow a law

sectional: applying to one region

Convention: this gathering

Supreme Judge of the World: God

rectitude: rightness

dissolved: broken up

resumed: taken back

State: country

levy: to start

contract: to make

Document: Declaration of Immediate Causes, South Carolina legislature, 1860

We maintain that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement, entirely releases the obligation of the other; and that where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences.

. . . We assert that fourteen of the States have deliberately refused, for years past, to fulfill their constitutional obligations, and we refer to their own Statutes for the proof. . . . The States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Illinois, Indiana, Michigan, Wisconsin and Iowa, have enacted laws which either nullify the Acts of Congress or render useless any attempt to execute them. In many of these States the fugitive is discharged from service or labor claimed, and in none of them has the State Government complied with the stipulation made in the Constitution. . . .

A geographical line has been drawn across the Union, and all the States north of that line have united in the election of a man [Abraham Lincoln] to the high office of President of the United States, whose opinions and purposes are hostile to slavery. He is to be entrusted with the administration of the common Government, because he has declared that that "Government cannot endure permanently half slave, half free," and that the public mind must rest in the belief that slavery is in the course of ultimate extinction.

On the 4th day of March next, this party will take possession of the Government. It has announced that the South shall be excluded from the

common territory, that the judicial tribunals shall be made sectional, and that a war must be waged against slavery until it shall cease throughout the United States. The guaranties of the Constitution will then no longer exist; the equal rights of the States will be lost. The slaveholding States will no longer have the power of self-government, or self-protection, and the Federal Government will have become their enemy.

We, therefore, the People of South Carolina, by our delegates in Convention assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, have solemnly declared that the Union heretofore existing between this State and the other States of North America, is dissolved, and that the State of South Carolina has resumed her position among the nations of the world, as a separate and independent State; with full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do.

Source: Teaching US History. (2009). Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina. Retrieved from teachingushistory.org/pdfs/ImmCausesTranscription.pdf

Comprehension Questions:

1. What is the “compact” that the authors say is broken, and who do they think broke it?
2. What evidence do the authors present that the compact has been broken?

Activities:

1. The South Carolina legislature quotes Lincoln’s views on slavery. How might Jefferson Davis have responded to Lincoln? Work with a partner to write a dialogue between Davis and Lincoln.
2. Although slave owners prevented most slaves from learning to read and write, write down what you think a slave might have said if he or she had a chance to respond to the authors of this declaration.
3. South Carolina argued that as a state, it was free to nullify federal laws. According to that reasoning, would Northern states mentioned be free to nullify the Fugitive Slave Act? Why or why not?

Reflection: Some history books say that the main cause of the Civil War was southern states governments’ determination to assert their states’ rights. Others say that the main cause was southern slaveowners’ determination to continue the racist practice of slavery. After reading this document, what do you think?

Resources:

Spielberg, S. (Director), & Kennedy, K. (Producer). (2012). *Lincoln*. USA: Dreamworks.

LESSON 3.9

WHY DID DWIGHT EISENHOWER ENFORCE DESEGREGATION?

Historical Figure: Dwight D. Eisenhower

Event: Little Rock Nine, 1957

Introduction: In what situations should the federal government use military power to enforce laws?

Mini-Lecture:

- In the *Brown v. Board of Education* case of 1954, the Supreme Court decided that segregated schools denied equal protection of the law to Black students.
- White leaders in some southern states announced that they would not enforce federal laws that desegregated schools; Orval Faubus of Arkansas was one such governor.
- Nine Black teenagers registered to attend the all-White Central High School, in Little Rock, Arkansas; they were called the “Little Rock Nine.”
- On the first day of school, Governor Faubus ordered Arkansas National Guard troops to prevent students from entering Central High School.
- A large, angry group of White people gathered to protest desegregation.
- President Eisenhower took control of the Arkansas National Guard and ordered Faubus to allow the students into the school under the protection of the 101st Airborne Division of the U.S. Army; our document comes from a speech he made explaining his decision.
- The Little Rock Nine did attend Central High School, but they continued to face discrimination.

Vocabulary:

mob: large group of angry people

facilities: buildings

compulsory: required

bearing: impact

enforcement: making sure people follow laws

decree: instruction

deliberate: careful

mob rule: control by a group of people who do not have legal powers and may use violence

relieve: to replace

Document: Desegregation address, Dwight Eisenhower, 1957

This morning the mob again gathered in front of the Central High School of Little Rock, obviously for the purpose of again preventing the carrying out of the [Supreme] Court’s order relating to the admission of Negro children to that school. . . .

As you know, the Supreme Court of the United States has decided that separate public educational facilities for the races are inherently unequal and therefore compulsory school segregation laws are unconstitutional.

Our personal opinions about the decision have no bearing on the matter of enforcement; the responsibility and authority of the Supreme Court to interpret the Constitution are very clear. Local Federal Courts were instructed by the Supreme Court to issue such orders and decrees as might be necessary to achieve admission to public schools without regard to race—and with all deliberate speed.

. . . The interest of the nation in the proper fulfillment of the law's requirements cannot yield to opposition and demonstrations by some few persons. Mob rule cannot be allowed to override the decisions of our courts. Now, let me make it very clear that Federal troops are not being used to relieve local and state authorities of their primary duty to preserve the peace and order of the community. Nor are the troops there for the purpose of taking over the responsibility of the School Board and the other responsible local officials in running Central High School. The running of our school system and the maintenance of peace and order in each of our States are strictly local affairs and the Federal Government does not interfere except in a very few special cases and when requested by one of the several States. In the present case the troops are there, pursuant to law, solely for the purpose of preventing interference with the orders of the Court.

Source: Lawson, S. F., & Payne, C. (1998). Dwight D. Eisenhower's Radio and Television Address to the American People on the Situation in Little Rock. In *Debating the Civil Rights Movement, 1945–1968* (pp. 60–64). Lanham, MD: Rowman & Littlefield.

Comprehension Questions:

1. To which decision of the Supreme Court is Eisenhower referring, and what did the case decide (see Lesson 2.11)?
2. According to Eisenhower, what is the purpose of the federal troops in Little Rock?

Activities:

1. Based on this speech, can you figure out Eisenhower's personal feelings about segregation? Choose one quotation that provides evidence for your answer.
2. What alternatives did Eisenhower have to sending federal troops to Little Rock? With a small group, come up with a list of alternatives, then explain why you think he didn't choose those alternatives.

Reflection: Do you think Eisenhower was right to use the military to enforce federal law in this case? Why or why not?

Resources:

Beals, M. P. (2001). *Warriors don't cry*. New York, NY: Simon Pulse.

LESSON 3.10

HOW DID ORVAL FAUBUS ARGUE FOR SEGREGATION AS A "STATE'S RIGHT"?

Historical Figure: Orval Faubus

Event: Little Rock Nine, 1957

Introduction: Why do you think so many White people in Arkansas opposed the integration of schools?

Mini-Lecture:

- In 1958, Arkansas governor Orval Faubus closed all public high schools in Little Rock rather than allow them to be integrated.
- Later that year, the majority of Little Rock voters chose for the schools to remain closed.
- Our document comes from a speech Governor Faubus made after announcing that the schools would close.
- In 1959, Little Rock public schools reopened and slowly began to integrate.

Vocabulary:

autocracy: government that controls
people's lives

intolerable: terrible

exhausted: lost

in essence: basically

expend: to spend

compel: to require

shirk: to avoid

effect: to do

attain: to gain

Document: Speech on School Integration, Orval Faubus, 1958

Last year, I stated during the September crisis that I was not elected Governor of Arkansas to surrender all our rights as citizens to an all-powerful federal autocracy. . . . It is my responsibility, and it is my purpose and determination, to defend the constitutional rights of the people of Arkansas to the full extent of my ability. . . .

It was with a heavy heart that I found it necessary to sign the bills of the Extraordinary Session of the General Assembly and to close the High Schools in the City of Little Rock. I took this action only after the last hope of relief from an intolerable situation had been exhausted. The Supreme Court shut its eyes to all the facts, and in essence said—integration at any price, even if it means the destruction of our school system, our educational processes, and the risk of disorder and violence that could result in the loss of life—perhaps yours. . . .

First. The federal government has no authority to require any state to operate public schools. Second. The federal government has no authority to tell a state government for what purposes it may levy taxes, or how the tax money may be expended. . . . Once again I am compelled to point out to the

people of this city, this state, this nation, and the world, if you please, that our objective has been to maintain the peace and good order of the community. As long as there is a legal way, as I have outlined, to maintain the peace and good order and a suitable educational system, I will not shirk from my duty and responsibility. . . .

Some people dread, shrink from, and grow weary of the struggle in which we are now engaged. I grow weary, also, but is there any choice? Once integration is effected totally and completely, will the peace and harmony you desire be attained? If we are to judge by the results elsewhere, anywhere, once total, or near total integration is effected, the peace, the quiet, the harmony, the pride in our schools, and even the good relations that existed heretofore between the races here, will be gone forever.

Source: Special Collections Department, University of Arkansas Libraries. (2008). Gov. Orval E. Faubus speech lesson plan. Retrieved from libinfo.uark.edu/specialcollections/research/lessonplans/FaubusSpeechLessonPlan.pdf

Comprehension Questions:

1. Whom is Faubus addressing, and why is he making the speech at this time?
2. According to Faubus, how is the federal government overstepping its rights?
3. According to Faubus, what will happen if schools are integrated?

Activities:

1. Segregationists like Faubus often said that segregation was necessary to keep “good relations . . . between the races.” Do you think that he and others really thought that race relations under segregation were good, or was this just an excuse to prevent change? Explain.
2. Look back at Lesson 3.3 to refresh your memory about the enumerated powers in the Constitution. Divide the class in half and stage a debate between Faubus and Eisenhower (Lesson 3.9) in which each of them uses the Constitution to defend his actions.

Reflection: Who do you think had a stronger constitutional argument for their actions, Faubus or Eisenhower? Who had a stronger moral argument?

Resources:

Hampton, H. (Producer). *Eyes on the prize: America's civil rights movement*. USA: PBS.

LESSON 3.11

DOES THE STATE OR FEDERAL GOVERNMENT PROTECT INDIVIDUALS FROM ENVIRONMENTAL HARM?

Historical Figure: Sandra Day O'Connor

Event: *New York v. United States*, 1992

Introduction: Who should make the decision about the disposal of environmental pollutants that might endanger human health: state, federal, or local governments? Why?

Mini-Lecture:

- When nuclear energy is made, radioactive waste is left over that can be dangerous to human health.
- It is difficult to build facilities to dispose of this waste, because most people don't want it near their homes.
- In 1985, Congress passed a law that allowed it, instead of the states, to decide where these facilities would be located.
- New York State cooperated with this law, but when Congress decided to place radioactive waste disposal sites in Allegany and Cortland, the residents of those areas objected.
- In response to public pressure, New York sued the United States, claiming the law was unconstitutional because it violated their state's right to make decisions about businesses within the state; New York won the case.
- Our document is from the Supreme Court's decision in *New York v. United States*, which was written by Sandra Day O'Connor.
- O'Connor was on the Supreme Court from 1981 to 2006; she was the first woman to be appointed.

Vocabulary:

infringement: violation

enactment: passage

abstract: theoretical, not practical

entity: thing

incentive: motivation or reward

accountable: responsible

sovereign: individual or group with power to make decisions

expedient: convenient

judiciary: court system

extraconstitutional: unconstitutional

gravity: seriousness

Document: *New York v. United States*, Supreme Court, 1992

How can a federal statute be found an unconstitutional infringement of state sovereignty when state officials consented to the statute's enactment? The answer follows from an understanding of the fundamental purpose served by our Government's federal structure. The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. . . .

State officials thus cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution. Indeed, the facts of these cases raise the possibility that powerful incentives might lead both federal and state officials to view departures from the federal structure to be in

their personal interests. Most citizens recognize the need for radioactive waste disposal sites, but few want sites near their homes. As a result, while it would be well within the authority of either federal or state officials to choose where the disposal sites will be, it is likely to be in the political interest of each individual official to avoid being held accountable to the voters for the choice of location. If a federal official is faced with the alternatives of choosing a location or directing the States to do it, the official may well prefer the latter, as a means of shifting responsibility for the eventual decision. If a state official is faced with the same set of alternatives—choosing a location or having Congress direct the choice of a location—the state official may also prefer the latter, as it may permit the avoidance of personal responsibility. . . .

. . . The Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day. The shortage of disposal sites for radioactive waste is a pressing national problem, but a judiciary that licensed extraconstitutional government with each issue of comparable gravity would, in the long run, be far worse.

Source: Justia. (n.d.). *New York v. United States*.

Retrieved from supreme.justia.com/cases/federal/us/505/144/case.html

Comprehension Questions:

1. According to O'Connor, why does the Constitution separate state and federal powers?
2. According to O'Connor, why might both state and federal officials want to avoid deciding where the radioactive waste disposal site would be located?

Activities:

1. Divide the class in half and debate the following proposition: Because pollution of the air and water (caused, for instance, by radioactive waste) has the potential to move across state lines, the federal government, not individual states, should regulate businesses that create pollution.
2. Imagine you are a citizen who lived in Cortland, New York, where the radioactive waste disposal site was located. Write a letter to O'Connor explaining your reaction to the decision in *New York v. United States*.

Reflection: Most of the time, we think of state and federal governments as competing for power. Yet O'Connor points out that deciding the location of radioactive waste facilities may be a power that neither federal nor state officials want. Can you think of other powers in this category?

Resources:

Union of Concerned Scientists. (n.d.). Nuclear waste. Retrieved from ucsusa.org/nuclear-power/nuclear-waste#.WQOrUJJSV3U

UNIT CONCLUSION

In this unit, students have gained a sense of the balance of power that exists in our federalist structure of government. They have seen how the Constitution's ambiguity allows for a give-and-take between state and federal control, and they will have realized that these questions can have a deeply personal impact on people's lives, from which schools they can attend, to whether they are allowed to remain on their land, to whether they are able to vote.

Students may be noticing patterns in how states' rights arguments have been used to justify the status quo, while the federal government has often pushed states to accept social change. They may make connections to the political spectrum they learned about in Unit 1 by noticing that conservatives favor a less powerful federal government, as well as the preservation of tradition. However, it is important to point out that both liberals and conservatives have used states' rights arguments (for instance, liberals did so on same-sex marriage before federal law supported it). Furthermore, the fact that conservative forces of the past resisted abolition and desegregation does not necessarily mean that conservatives today would hold those positions. Noting these points may ease the tension that can build up when students try to apply what they are learning to the current political situation in a way that lacks nuance.

Students will be on track for a smoother summit, having had two experiences already. Again, teachers will want to consider students' identities and feelings when deciding who should represent figures such as Jefferson Davis and Orval Faubus. Teachers may also notice that some students gravitate toward representing less controversial figures, such as Sandra Day O'Connor; whether they should be encouraged to step out of their comfort zones or keep within them for the time being will depend on the teacher's judgment.